



General Assistance Obligations

While the *Salts v. Lancaster County*, 269 Neb. 948, 697 N.W.2d 289 (2005) was decided more than ten years ago, it has come to our attention that some counties are continuing to contend with issues associated with “residency”/legal settlement definitions and other related matters when billing counties for individuals who traveled to another county for medical or other indigent care.

This article is intended to be a reminder of the current statutory framework on general assistance obligations as it relates to issues that counties face. Neb. Rev. Stat. § 68-104 provides the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county. Additionally, it is intended to provide references to abilities of treating counties to be able to bill counties of legal settlement provided statutory provisions are met.

In *Salts*, the court stated:

Counties had no common-law duty to provide assistance to indigent persons. However, since the inception of our state, the county board by statute has been “made the overseer of the poor and the county has a mandatory duty to provide for poor persons whether they are residents or nonresidents of the county.” The current statutes governing county general assistance programs for the poor are codified at §§ 68–104 et seq. The extent of a county’s duty to provide assistance to indigent persons must be determined by reference to the applicable statutes which create the duty. A county is a political subdivision of the state and has only that power delegated to it by the Legislature. It follows that a county may not employ its rulemaking power to modify, alter, or enlarge portions of a statute pursuant to which it acts. (*Citations omitted.*)

The issue in the *Salts* case was whether the county exceeded its statutory authority by imposing certain durational residency requirements for primary health care benefits under its general assistance program. In upholding the validity of Lancaster County’s residency requirements, the district court focused on a portion of § 68–114 which provided in part:

Whenever any nonresident shall fall sick in any county in this state, not having money or property to pay his or her board, or whenever any poor person not having a legal settlement in the county is found in distress, without friends or

money, so that he or she is likely to suffer, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary; and if any such person shall die, the county board shall provide all necessary means for a decent burial of such person.

In *Mary Lanning Memorial Hospital v. Clay County*, *supra*, this court held that § 68–114 applied to an indigent nonresident of the state who was injured while walking along a Nebraska highway. In the *Salts* case, the district court held that the statute also applied to a Nebraska resident who did not reside in the county in which he sought medical care under a general assistance program. The district court reasoned that § 68–114 gave Lancaster County “broad discretion on how it chooses to address the medical needs of nonresidents” and therefore upheld the county’s denial of medical benefits to Salts because he was a nonresident of the county and his medical needs were not life-threatening. The district court agreed with the determination of the hearing examiner that Salts should apply for general assistance in the county where he had established legal settlement for purposes of general assistance, and request that he be permitted to remain in Lancaster County for treatment.

The starting point in the Court’s analysis was § 68–104, which obligates the county board of each county to “furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county.” The statute further states that in providing such medical assistance, “the county board shall make use of any existing facilities, including tax-supported hospitals and charitable clinics so far as the same may be available.”

Each Nebraska county is required by § 68–133(1) to “[p]rovide that all individuals desiring to make application for general assistance shall have opportunity to do so....” Each county is further required by § 68–133(2) to provide a schedule of goods and services, including medical expenses, which are “necessary for the maintenance of minimum decency and health for families of various sizes, including single persons.” Lancaster County provides certain primary health care benefits for persons participating in its general assistance program, as well as specialty physician services and hospital care when certified as “medically necessary” by the primary physician. Treatment for a condition is considered medically necessary “if the condition will worsen without medical intervention and interfere with the client’s self-sufficiency or ability to work.”

Importantly, regarding Nebraska residents, the place of “legal settlement” is an essential factor in determining responsibility for general assistance benefits. Section 68–131 states in part:

When any poor person does not have a spouse, parent, or stepparent supporting him or her or is not eligible for other general assistance programs, the poor person shall receive such relief, referred to as general assistance for purposes of sections 68–131 to 68–148, out of the treasury of the county in which he or she has legal settlement at the time of applying for assistance, in the manner provided in sections 68–131 to 68–148.

The term “legal settlement” for purposes of all public assistance programs is defined by § 68–115 in part as follows:

Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement in such county.

Every person who has resided **one year continuously within the state, but not in any one county shall have a legal settlement in the county in which he or she has resided six months continuously.**

(2) The time during which a person has been an inmate of any public or private charitable or penal institution, or has received care at public expense in any type of care home, nursing home, or board and room facility licensed as such and caring for more than one patient or guest, and each month during which he or she has received relief from private charity or the poor fund of any county shall be excluded in determining the time of residence hereunder, as referred to in subsection (1) of this section.

The significance of an indigent person's county of "legal settlement" is apparent from §§ 68–143 through 68–145. Section 68–143 provides that "[a]ny person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established a legal settlement as defined in section 68–115." Section 68–144 then provides:

If any person shall become chargeable in any county in which he or she has not established a legal settlement at the time of applying for aid, he or she shall be duly taken care of by the proper authority of the county where he or she may be found. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Section 68–145 provides:

If a poor person, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she has a legal settlement, or for any other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for, and recover from the county to which such individual belongs, the amount expended for and in behalf of such poor person and in taking care of such person.

The Court determined, "The statutory scheme summarized above clearly contemplates that a person eligible for general assistance benefits may apply for such benefits in a county other than his or her county of "legal settlement." Likewise, a county in which the eligible applicant has not established "legal settlement" may be responsible for providing necessary services, although it would then have a right to seek reimbursement from the county in which the recipient had legal settlement and which, under § 68–131, bears ultimate financial responsibility for such general assistance benefits. Section 68-131 provides as follows:

When any poor person does not have a spouse, parent, or stepparent supporting him or her or is not eligible for other general assistance programs, the poor person shall receive such

relief, referred to as general assistance for purposes of sections 68-131 to 68-148, out of the treasury of the county in which **he or she has legal settlement at the time of applying for assistance**, in the manner provided in sections 68-131 to 68-148. Any person who is or becomes ineligible for other general assistance programs due to his or her own actions or inactions shall also be ineligible for general assistance from the county.

As described by the Court,

Construed as a whole, the only reasonable interpretation of the general assistance statutes is that a county must provide to all eligible persons located in the county that assistance which is necessary to maintain minimum health and decency, subject to its right to seek financial reimbursement from another county in which a recipient has “legal settlement.” The phrase “shall deem necessary” in § 68–114 does not authorize a county to provide a level of medical assistance to nonresidents of the county which is different from that which it provides to its own eligible residents. Rather, we conclude that the general assistance statutes obligate each county to provide to all eligible persons, whether or not they are residents of that county, the minimum level of care which it has undertaken pursuant to § 68–133(2). This statutory interpretation should not impose an undue financial burden on those counties having a concentration of medical facilities because of the requirement that general assistance benefits are to be paid “out of the treasury of the county in which [the recipient] has legal settlement at the time of applying for assistance,” and because a county providing necessary medical care through its general assistance program has a right of reimbursement from the recipient’s county of legal settlement. See §§ 68–131, 68–144, and 68–145.

To see the [full text of the decision](#).

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